

**United States Bankruptcy Court for the District of Maine
Local Rules Committee**

**Meeting Minutes – October 11, 2016, 10:00 A.M.
rev. 12/1/16**

A regular meeting of the Local Rules Committee for the United States Bankruptcy Court for the District of Maine was held at the Bankruptcy Court on October 11, 2016. Members of the Committee in attendance were Judge Michael A. Fagone, Andrea Bopp Stark, Esq., Roger A. Clement, Jr., Esq. (Chair), Allison A. Economy, Esq., Alec Leddy, Esq. (Clerk of Court), Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and F. Bruce Sleeper, Esq.

Darcie P. L. Beaudin, Esq., Steven E. Cope, Esq., Randy Creswell, Esq., Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), and Richard A. Silver, Esq. were absent.

1. Approval of Minutes. Minutes of the June 14, 2016 meeting were approved.
2. Chair Announcements. Mr. Clement welcomed Bruce Sleeper, who was recently appointed to the Committee by Chief Judge Cary. Jessica Lewis has stepped down from the Committee, as she has accepted the position of law clerk to Judge Cary.
3. Clerk's Office Update. There was no update from Mr. Leddy.
4. Discovery in Contested Matters. The Committee discussed the proposed amendment to LBR 9014-1(a)(3) that was discussed at the June 14 meeting, and which was attached to the meeting Agenda as Exhibit A. The Committee was unanimous in its decision to recommend the following language:

~~*Discovery Requirements. Unless otherwise ordered by the court, Fed.R.Bankr.P. 75026 shall not apply to contested matters. At the first hearing on a contested matter, the parties should be prepared to address the need for discovery and, if applicable, the issues and topics identified in Fed.R.Civ.P. 26(f)(3)(B)-(F). Discovery in a contested matter may not commence until authorized by order of the Court.*~~

5. Should Consented-To Motions for Relief from Stay Require the Consent of Codebtors Protected by the Stay Under §§1201 and 1301?

Issue: Rule 4001-1(g) requires consent of the trustee and the debtor for a motion for relief from stay to be filed as consensual, but does not require consent from codebtors. If a M/R/S is consensual, then no hearing is required. See, LBR 9013-1(d). But, a consented to M/R/S that does not include the consent of a codebtor should not lead to the relief that the movant truly seeks, which is to be free to foreclose on its collateral. Should LBR 4001-1(g) be amended to require consent of codebtors protected by the stay?

After discussion, the Committee determined that the issue is whether a party seeking relief from the automatic stay must obtain the consent of the codebtor in order for the motion to be granted without a hearing. Currently, LBR 9013-1(d) does not have provision for relief without a hearing even when the codebtor consents. Should a change be made to LBR

9013 1(d), to deal with exceptions to the hearing date requirement when the codebtor consents? If so, consider the following: “Motions for relief from the stay that have the consent of the debtor and of any trustee and committee appointed in the case, as well as of any non-filing codebtor if relief from a codebtor stay is sought.”

The Committee agreed that no changes should be made to LBR 4001-1(g). The Committee noted that §§ 1201(d) and 1301(d) of the Code give the codebtor standing to object to a motion for relief from stay, thereby suggesting that the codebtor stay was intended to protect codebtors as well as debtors. Judge Fagone noted that there is no fee associated with a motion for relief from stay seeking relief as to the codebtor stay only.

Ms. Economy will look at the issue of whether the codebtor stay is intended to protect only the debtor, or the codebtor as well.

Mr. Leddy will check to see if the Clerk's office collects a fee for a motion for relief from the codebtor stay when such motion is not accompanied by a request for relief from the automatic stay as to the Debtor. [N.B.: Following the meeting, Alec reported to the Committee that the Court has a separate docketing event for motions seeking relief from the co-debtor stay only. The event is called "Relief from Co-Debtor Stay." There is no fee associated with that event. In contrast, the "Relief from Stay" event results in a fee, regardless what the motion says.]

6. Global Revision to Local Rules. Judge Fagone stated that the Committee has more time sensitive and pressing issues than undertaking a global revision to the Local Rules. Accordingly, this item will be removed from the agenda.

7. USDC Local Rules Advisory Committee Regarding New Disclosure Rules for Appeals to District Court. Mr. Clement reported that the United States District Court Local Rules Advisory Committee is reviewing a request from the court to draft a disclosure rule akin to Local District Court Rule 7.1, which would apply to appeals from the bankruptcy court to the district court.

8. New Federal Rules of Bankruptcy Procedure. Judge Fagone reported on new Federal Rules of Bankruptcy Procedure that will become effective on December 1, 2016. These new rules fall into the following categories: (a) rules dealing with Stern v. Marshall issues; (b) rules dealing with cross-border issues; (c) revisions to Rule 3002.1 (relating to chapter 13 plan payments on account of claims secured by the debtor's principal residence); and (d) 9006 (relating to time computation when service is effectuated electronically). Judge Fagone recommended that the Committee consider forming one or more subcommittees to consider whether these rule changes will necessitate changes to the Local Rules.

9. Uniform Chapter 13 Plans. Judge Fagone stated that Rules 3015 and 3015.1 are likely to be amended to require chapter 13 plans that conform to a federal form. These new rules will likely take effect December 1, 2017. Each district will have the ability to opt out, provided that a defined process is followed. The opt out process will require an official comment period. Accordingly, the Committee discussed forming a subcommittee to analyze the “national”

chapter 13 plan, solicit input from members of the bar and other appropriate persons, and determine whether we would recommend pursuing a process for opting out of the national plan. The Committee discussed including chapter 13 practitioners who may not be on the Local Rules Committee.

10. Severed Chapter 13 Plans. Mr. Sleeper raised the issue of how severed chapter 13 plans should be dealt with. These are chapter 13 cases that are filed jointly, but then severed into two cases. It was agreed this item should be added to the Agenda for our next meeting.

11. Next Meeting. The next meeting will be on Tuesday, December 6, 2016, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.